



Federal Aviation Administration
Office Of The Chief Counsel
Office Of Dispute Resolution For Acquisition (ODRA)

Alternative Dispute Resolution Agreement
For Mediation Of the Protest of [Protester's Name]
Pursuant to Solicitation DTFA[_____]
Issued by the Federal Aviation Administration [Headquarters/_____Region]

ODRA Docket No. [__-ODRA-__]

This Agreement is executed by and among the Federal Aviation Administration (FAA) [_____ Region (Region)], [Protester's Name], and [Intervenor's Name], hereinafter collectively referred to as the "parties," in connection with their joint efforts to resolve the above referenced protest by means of alternative dispute resolution (ADR).

1. Background.

The FAA Office of Dispute Resolution for Acquisition (ODRA) is independent of FAA organizations responsible for procurement actions. The ODRA has been provided broad discretion by the Administrator of the FAA to promulgate rules of procedure and to utilize a variety of ADR techniques to resolve both procurement protests and contract disputes. See 14 C.F.R. Part 17.

2. Agreement to Mediate

The parties hereto hereby agree to utilize a form of ADR, early neutral evaluation/facilitative mediation, in order to attempt to resolve their differences in the instant protest. Such ADR shall be conducted by a Neutral Mediator concurrently with ongoing adjudication of the protest by the ODRA under its Default Adjudicative Process. In furtherance of both processes, the Neutral Mediator shall assist the parties in reaching amicable agreement on such matters as the protester's requested contract performance stay and its requests for document production. Should the parties not amicably settle the protest via ADR under this Agreement, any remaining unsettled matters shall be resolved by means of the Default Adjudicative Process under 14 C.F.R. §17.37.

3. Designation of Neutral Mediator

The parties hereby agree that [Neutral's Name], [an ODRA Dispute Resolution Officer/a General Services Administration Board of Contract Appeals (GSBCA) Board Judge, etc.] shall serve as their Neutral Mediator in this protest.

4. Procedures and Groundrules for the Conduct of The Mediation.

The procedures and groundrules for the conduct of the mediation are set forth in Appendix 1, which is attached hereto and made part of this ADR Agreement. The Neutral Mediator shall have broad discretion to administer those procedures in the interests of efficiency, effectiveness, and a fair resolution of the issues in controversy.

During the pendency of this matter before the Neutral Mediator, the ODRA Director may review the progress of mediation status with the Neutral Mediator, but shall not be privy to the parties' confidential dispute resolution communications with the Neutral Mediator, or to the specifics of any settlement proposals, unless the parties agree thereto.

In providing any guidance and evaluation of the merits of the case, the Neutral Mediator will apply the principles of the FAA Acquisition Management System and applicable law. The Neutral Mediator will have broad discretion in recommending compromises, resolutions or advice in arriving at a settlement agreement.

FEDERAL AVIATION ADMINISTRATION
_____ REGION:

By _____
_____, Counsel

Date: _____

[PROTESTER]:

By _____
_____, Counsel

Date: _____

[INTERVENOR]:

By _____
_____, Counsel

Date: _____

NEUTRAL MEDIATOR

Name/Title

Date: _____

APPROVED:

Anthony N. Palladino, Director
Office of Dispute Resolution for Acquisition

Date: _____



Federal Aviation Administration
Office Of The Chief Counsel
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FEDERAL AVIATION ADMINISTRATION
Office of Dispute Resolution for Acquisition

Appendix 1

to

Alternative Dispute Resolution Agreement
For Mediation Of the Protest of [Protester's Name]
Pursuant to Solicitation DTFA[_____]

Issued by the Federal Aviation Administration [Headquarters/_____Region]

ODRA Docket No. [__-ODRA-00__]

Procedures and Groundrules for Mediation

1. The parties agree to attempt to resolve the dispute by using a Neutral Mediator who shall assist the parties in reaching the settlement of the dispute, by providing early neutral evaluation (ENE) and by facilitating negotiations between or among them. The Neutral Mediator shall participate impartially in the negotiations, and shall advise and consult with the parties involved.
2. The Neutral Mediator shall have no financial or personal interest in the result of the mediation. A prospective Neutral Mediator shall disclose to the parties and to the FAA Office of Dispute Resolution for Acquisition (ODRA), prior to accepting his or her appointment, any circumstance likely to create a conflict of interest or presumption of bias or to prevent a prompt meeting with the parties. Upon receipt of such information, the ODRA Director, at the request of either party, shall promptly designate a replacement Neutral Mediator – either a member of the ODRA staff or a replacement Compensated Neutral agreeable to all parties.
3. If, during the course of mediation, any Neutral Mediator shall become unwilling or unable to serve, the ODRA Director will appoint another Neutral Mediator, unless the parties agree otherwise.
4. A party shall choose its own representatives for participation in any mediation proceedings. Each party must delegate a principal representative. The principal representative shall have authority to enter into a settlement agreement on behalf of his/her party. The principal representative for each party shall execute this Alternative Dispute Resolution Agreement.

5. The Neutral Mediator shall, upon consultation with the parties, fix the date, time and place of each mediation session. Mediation proceedings may be conducted via telephone conference, as needed.

6. The Neutral Mediator may, at any time in advance of mediation sessions, require the parties to produce and deliver to him/her (and, if appropriate, to provide copies to the other parties) all information and documentation the Neutral Mediator determines is reasonably needed for him to understand the issues presented and the respective positions of the parties.

7. The parties agree that the Neutral Mediator is authorized to conduct joint sessions with all parties as well as separate caucuses with individual parties and to make oral and written recommendations for settlement. The Neutral Mediator shall not have the authority to impose a settlement on the parties.

8. The parties agree that they and their representatives shall treat the mediation process hereunder as confidential. Persons other than the parties and their designated representatives may attend mediation sessions or otherwise participate in the process only by mutual agreement of the parties and with the consent of the Neutral Mediator. Information disclosed in the course of the mediation and all records, reports, or other documents exchanged by the parties or provided to the Neutral Mediator as part of the mediation process shall be considered as privileged and confidential settlement and dispute resolution communications pursuant to Rule 408 of the Federal Rules of Evidence and the Administrative Dispute Resolution Act of 1996, 5 U.S.C. §574. All such information and documents shall not be divulged by the parties or by the Neutral Mediator, except as agreed upon by all parties, unless compelled to do so by law or court order. Neither party may use such information or documents for any purpose other than for the pursuit of settlement hereunder. In particular, the parties agree that they shall not rely on, or introduce any of the following matters as evidence in any arbitral, administrative, judicial, or other proceeding:

- (a) views expressed or proposals made by a party with respect to a possible settlement of the dispute;

- (b) admissions made by another party in the course of the mediation proceedings;

- (c) proposals made or views expressed by the Neutral Mediator; or

- (d) the fact that a party had or had not indicated willingness to accept a settlement proposal advanced by the other party or the Neutral Mediator.

9. The parties further agree on behalf of themselves and their officers, employees, attorneys and representatives that none of them shall call upon or subpoena the Neutral Mediator in any legal, arbitral or administrative proceeding of any kind to testify, or to produce any notes, files or documents in any way created in connection with the mediation process hereunder. In no event shall the Neutral Mediator voluntarily testify on behalf of either party or third person in connection with the matters to be resolved by mediation hereunder.

10. Mediation proceedings shall be subject to the Protective Order issued by the ODRA for the instant protest.

11. Unless the parties agree otherwise, there shall be no stenographic record of the mediation process.

12. Notwithstanding the provisions of the foregoing paragraphs 8 through 11, evidence otherwise admissible or discoverable shall not be rendered inadmissible or undiscoverable because of its use in the mediation process hereunder. If a settlement is reached pursuant to mediation hereunder, any information disclosed or documents created or exchanged in settlement discussions or during the mediation process may be used within the parties' respective organizations in order to explain and document the settlement. It is expressly understood that neither this Agreement nor any settlement agreement will be confidential.

13. The parties agree that the mediation shall be terminated when one of the following occurs:

- (a) the execution of a settlement agreement;

- (b) the Neutral Mediator makes a written declaration to the parties and to the ODRA Director that further efforts at mediation are no longer worthwhile; or

- (c) the Region or the Protester makes a written declaration to the Neutral Mediator and to the ODRA Director that the mediation proceedings are terminated.

14. Should the matter in controversy have to be resolved by the ODRA's Default Adjudicative Process, the Neutral Mediator shall not take part in that process.

15. The Neutral Mediator shall interpret and apply the terms of this Alternative Dispute Resolution Agreement and the foregoing groundrules, insofar as such terms and groundrules relate to the Neutral Mediator's duties and responsibilities. All other terms and groundrules shall be interpreted and applied by the ODRA Director.